

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs February 8, 2006

**KRYSTAL REED, ET AL. v. TENNESSEE FARMERS MUTUAL  
INSURANCE COMPANY**

**Appeal from the Circuit Court for Rhea County  
No. 21304     Thomas W. Graham, Judge**

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**No. E2005-01663-COA-R3-CV - FILED MARCH 30, 2006**

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Krystal Reed and Susan Beck, co-administrators of the estate of Karen D. Durham (“the decedent”), brought suit against Tennessee Farmers Mutual Insurance Company, seeking to recover a \$10,000 death benefit under the terms of a policy of automobile insurance. The general sessions court found for the estate, holding that the estate had complied with the terms of the policy by submitting – in the words of the policy – “a police report or other proof establish[ing] with reasonable certainty” that the decedent was wearing a proper occupant restraint at the time of the accident. Tennessee Farmers appealed to the trial court and the estate filed a motion for summary judgment. The trial court granted the estate’s motion, holding that the policy unambiguously provides that the submission of the requisite police report was sufficient to establish Tennessee Farmers’ liability for the death benefit. The court also held that the plain language of the policy did not permit Tennessee Farmers to present any contradictory proof on the subject of whether the decedent was wearing the proper restraint at the time of the accident. Tennessee Farmers appeals, challenging this latter ruling. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Lynne D. Swafford, Pikeville, Tennessee, for the appellant, Tennessee Farmers Mutual Insurance Company.

Howard L. Upchurch, Pikeville, Tennessee, for the appellees, Krystal Reed and Susan Beck, Co-Administrators of the Estate of Karen D. Durham.

**OPINION**

I.

On February 17, 1999, the decedent was killed in a one-car automobile accident. At the time of the accident, the vehicle driven by the decedent was covered by an automobile insurance policy issued by Tennessee Farmers. It is undisputed that the decedent was insured under the policy.

The automobile insurance policy at issue contains a provision identified in the record as “Endorsement 10,” which provides, in pertinent part, as follows:

**We** will pay a death benefit of ten thousand dollars (\$10,000) because of the death of a “covered person”, as defined in **Part C** of the policy, caused by an **auto** accident and sustained by said covered person while wearing an unaltered seat belt and shoulder restraint as recommended by the vehicle manufacturer. If the covered person is a child the restraint must be one recommended by its manufacturer as appropriate for use by children of like age and weight.

**We** will pay benefits only if an **auto** accident was the proximate cause of death occurring within 90 days of the date of such accident.

**We** will pay benefits under this endorsement *provided a police report or other proof establishes with reasonable certainty that the deceased covered person was wearing an unaltered seat belt or seat and shoulder restraint as recommended by the vehicle manufacturer at the time the **auto** accident occurred.* Payment under this endorsement will be made to the deceased covered person’s estate.

(Bold type in original; emphasis added). No issue was made by Tennessee Farmers as to whether the seat belt and shoulder restraint on the driver’s seat were “unaltered” at the time of the accident.

Sergeant Steve Bearden of the Tennessee Highway Patrol (“THP”) prepared a “Tennessee Uniform Traffic Crash Report” following the accident. When he arrived on the scene, the decedent had already been extracted from the vehicle by emergency workers. Her extraction was necessary in order to rescue a small child who was trapped underneath the decedent’s body. After speaking with the workers on the scene, Sgt. Bearden entered the code “03” for “Safety Equipment” on the accident report. The THP code definition manual defines “03” as “shoulder and lap belt used.”

Following the decedent’s death, Krystal Reed and Susan Beck, as co-administrators of the decedent’s estate, filed an application with Tennessee Farmers to collect the death benefit under the policy; the estate included with the application a copy of Sgt. Bearden’s report. Tennessee Farmers denied the claim, contending that an investigation by the company had revealed that the decedent had not been wearing her seat belt at the time of the accident.

Upon the denial of the claim, the estate filed a complaint in general sessions court against Tennessee Farmers, seeking payment of the \$10,000 death benefit, plus penalties, interest, and attorney's fees. On November 14, 2000, the general sessions court found for the estate, awarding it \$10,000, plus pre-judgment interest. The court based its award on the following findings: (1) that, since the insurance policy was drafted by Tennessee Farmers, it must be interpreted against the company; (2) that the policy is unambiguous; (3) that the estate is entitled to recover the death benefit "if an accident report prepared by a law enforcement official reflects that the decedent was wearing a seatbelt at the time and place of the accident"; and (4) that, since Tennessee Farmers was presented with such a report, any additional proof offered by the company is not material to the issue of Tennessee Farmers' liability.

Following the entry of this judgment, Tennessee Farmers appealed to the trial court. The estate filed a motion for summary judgment, to which Tennessee Farmers filed a response. In addition, Tennessee Farmers filed the affidavits of Sgt. Bearden,<sup>1</sup> EMT Craig Ward, and engineer R.J. Hill; the curriculum vitae and report of Mr. Hill; and a report signed by Detective Mike Owenby. These documents tend to bring into question whether the decedent was wearing the requisite restraint at the time of her accident.

On January 25, 2005, the trial court entered an order granting the estate's motion for summary judgment, finding as follows:

The policy provision at issue is not ambiguous. It provides:

"We will pay benefits under this endorsement provided a police report . . . establishes with reasonable certainty that the deceased covered person was wearing . . . seat and shoulder restraint."

The completed Tennessee Uniform Traffic Crash Report for the accident coded the covered decedent 03 as to safety equipment. The definition of 03 is "Shoulder and lap belt used." There is nothing about "Shoulder and lap belt used" or any other notation relative to seat belt usage in the crash report which is ambiguous. The fact that some outside proof might suggest otherwise is not a circumstance covered by the endorsement. The endorsement makes the report a condition precedent to payment.[FN1] To hold otherwise would negate the unambiguous obligation that payment will be made if the report with "reasonable certainty" states the covered person was "wearing . . . seat and shoulder restraint." There being no ambiguity

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<sup>1</sup>Sgt. Bearden's affidavit simply states what was reported earlier in this opinion, *i.e.*, that he based his report with respect to the seat restraint on what he was told by others at the scene.

in either the endorsement provision or the police report, the Plaintiffs' Motion must be granted as a matter of law.

FN1. The endorsement allows a claimant the option to produce either the police report or other proof. There is no similar option for the Defendant to challenge the claim.

Thereupon, the trial court awarded the estate \$10,000, plus pre- and post-judgment interest at the rate of 10% per annum, to be calculated from the date the estate filed the general sessions court complaint. From this judgment, Tennessee Farmers appeals.

## II.

In deciding whether a grant of summary judgment is appropriate, courts are to determine “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04. Courts “must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence.” *Byrd v. Hall*, 847 S.W.2d 208, 210-11 (Tenn. 1993) (citations omitted). Since summary judgment presents a pure question of law, our review is *de novo* with no presumption of correctness as to the trial court’s judgment. *Gonzales v. Alman Constr. Co.*, 857 S.W.2d 42, 44-45 (Tenn. Ct. App. 1993).

## III.

Tennessee Farmers raises a single issue, which presents the following question:

Under an automobile insurance policy reciting a death benefit of \$10,000 “provided a police report or other proof establishes with reasonable certainty that the deceased covered person was wearing an unaltered seat belt or seat and shoulder restraint,” can the insurer seek to contradict, by oral testimony, a police report establishing that the decedent was wearing the requisite restraint at the time of the accident which resulted in her death?

We hold that it cannot.

In interpreting contracts of insurance, we must, as a general rule, apply the same rules of construction as are applicable to other types of contracts. *See McKimm v. Bell*, 790 S.W.2d 526, 527 (Tenn. 1990). Such contracts are to be interpreted as they are written – absent any fraud or mistake – and their terms must be given their plain and ordinary meaning. *Swanson v. Mid-South Title Ins. Corp.*, 692 S.W.2d 415, 419 (Tenn. Ct. App. 1984). The law is well-settled in this state that any uncertainties or ambiguities in an insurance policy “must be construed strongly against the

insurer and in favor of the insured.” *Travelers Ins. Co. v. Aetna Cas. & Sur. Co.*, 491 S.W.2d 363, 366 (Tenn. 1973). The interpretation of a contract presents a question of law for the court. *Union Planters Corp. v. Harwell*, 578 S.W.2d 87, 92 (Tenn. Ct. App. 1978).

In the instant case, the trial court examined the policy language and determined that it unambiguously provided that the estate could produce *either* a police report *or* other proof which showed, with reasonable certainty, that the decedent was wearing a seat belt at the time of the accident. The police report presented by the estate indicated – in no uncertain terms – that the decedent was wearing a shoulder and lap restraint at the time of the accident. That, according to the trial court, ended the inquiry. The court concluded that there was no provision in the policy that would allow Tennessee Farmers to challenge the correctness of the police report by presenting additional proof on the subject.

We agree with the trial court’s interpretation of the policy. The language is plain and unambiguous; once the estate produces a police report indicating – with reasonable certainty – that the decedent was wearing the requisite safety restraint, there is no need for the estate to present any further proof, nor is Tennessee Farmers permitted to present proof in opposition. The police report relied upon by the estate clearly reflects the use of the proper seat and shoulder restraint. Since the accident report does not reflect any uncertainty with respect to this matter, it is fair to conclude that the report shows the requisite facts with “reasonable certainty.”

Tennessee Farmers advances the position that reliance upon the police report as a condition precedent to payment of the death benefit violates the spirit of the policy. It argues that payment of the death benefit should be reserved for those instances when the decedent was *actually wearing* a seat belt, and not when a police report simply indicates that such a restraint was used. While this may have been Tennessee Farmers’ underlying intention when it drafted the policy, such an intent is not evident from the plain language of the policy. “[I]n matters of unambiguous written instruments absent proof of fraud, misrepresentation, undue influence and situations of like character, the unspoken subjective intent of a party is not relevant.” *Malone & Hyde Food Servs. v. Parson*, 642 S.W.2d 157, 159 (Tenn. Ct. App. 1982). If Tennessee Farmers had desired more stringent proof on the issue of the use of a safety restraint as a prerequisite to its liability, it could have drafted the policy to so provide. It did not. Contrary to the insurance company’s position, the issue in the instant case is not whether the decedent was wearing the proper device at the time of the accident; the issue is whether there is an accident report reflecting this fact with “reasonable certainty.” There is; therefore, as the saying goes, that is the “end of story.”

Since, under the terms of the policy, the affidavits submitted by Tennessee Farmers do not make out a genuine issue of material fact bearing on Tennessee Farmers’ liability for the death benefit, summary judgment was and is appropriate.

IV.

The judgment of the trial court is affirmed. This case is remanded to the trial court for the enforcement of that court's judgment and for the collection of costs assessed below, all pursuant to applicable law. Costs on appeal are taxed to the appellant, Tennessee Farmers Mutual Insurance Company.

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CHARLES D. SUSANO, JR., JUDGE